



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-031105-031)

In The Matter Of:

SCOTT DAVID BEACH, R.Ph.

157 Garmatter Street
Bluffton, Ohio 45817
(R.Ph. No. 03-1-22728)

INTRODUCTION

THE MATTER OF SCOTT DAVID BEACH CAME FOR HEARING ON OCTOBER 6, 2004, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: LAWRENCE J. KOST, R.Ph. (presiding); GREGORY BRAYLOCK, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; ELIZABETH I. GREGG, R.Ph.; NATHAN S. LIPSYC, R.Ph.; KEVIN J. MITCHELL, R.Ph.; AND DOROTHY S. TEATER, PUBLIC MEMBER.

SCOTT DAVID BEACH WAS REPRESENTED BY DAVID W. GRAUER AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

State's Witnesses

1. Todd Knauss, Ohio State Board of Pharmacy

Respondent's Witnesses

1. Scott David Beach, R.Ph., Respondent

State's Exhibits

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [11-05-03]
1A-1D. Procedurals
1E. Addendum Notice [03-31-04]
1F-1H. Procedurals
1I. Addendum Notice [06-29-04]
1J. Procedural
2. Notarized Statement of Scott Beach [10-16-03]
3. LabCorp Drug Screen Report for Scott D. Beach [10-16-03]
4. Rx #2205343 [10-11-03]; Patient Record for Chris Kohli [10-11-03]
5. Three photocopies of a stock bottle labeled as containing 100 hydrocodone bitartrate and acetaminophen tablets 10/500 mg [not dated]

6. Two photocopies of a medicine vial [not dated]
7. Two surveillance photocopies [10-14-03]
8. Two surveillance photocopies [10-15-03]
9. Audit Report of Greg's Pharmacy, Bluffton and Greg's Pharmacy, Pandora [05-01-01 to 10-22-03]
10. Bill of Information and Judgment Entry for Intervention in Lieu of Conviction, State of Ohio vs. Scott D. Beach, Allen County Common Pleas Court, Case No. CR 2004 0170 [04-21-04]

Respondent's Exhibits

- A. Treatment Compliance letter from Donna Robinson, BSW, CCDC I [09-29-04]
- B. Treatment Compliance letter from Deb Kline, RN, CARN [11-06-03]
- C. PRO Pharmacist's Recovery Contract for Scott Beach [12-01-03]
- D. LabCorp Drug Screen Report [02-19-04]; Compass Vision Licensee Summary Report [02-19-04 to 09-21-04]; Medtox Laboratories Specimen Donor Receipt [01-14-04]
- E. Support Group Attendance Records [10-22-03 to 09-29-04]
- F. Fax Transmission cover sheet from ProMedica Health System [10-05-04]; The Toledo Hospital Alcohol and Drug Treatment Center Patient Discharge Recommendations/-Plan/Agreement for Scott Beach [04-02-04]; After Care Attendance Records [01-05-04 to 09-28-04]
- G. Allen County Adult Probation Status Report for Scott Beach [09-29-04]; Drug Tests Report [04-21-04 to 09-30-04]; Conditions of Community Control [04-21-04]; Judgment Entry, State of Ohio vs. Scott D. Beach, Case No. CR 2004 0170, Allen County Common Pleas Court [04-21-04]
- H-O. Eight letters of support [09-30-04 through 10-01-04]

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds the following to be fact:

- (1) Records of the State Board of Pharmacy indicate that Scott David Beach was originally licensed by the State of Ohio as a pharmacist on November 12, 1997, pursuant to examination, and that his license to practice pharmacy in Ohio was summarily suspended on November 5, 2003.
- (2) Scott David Beach is addicted to or abusing drugs to such a degree as to render him unfit to practice pharmacy within the meaning of Sections 3719.121 and 4729.16 of the Ohio Revised Code, to wit: Scott David Beach has admitted to Board agents that he is addicted to hydrocodone and oxycodone. Scott David Beach has stolen controlled substances, and forged a prescription to hide his thefts, for his personal abuse of the drugs.
- (3) Scott David Beach did, on or about October 14, 2003, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Greg's Pharmacy, beyond the express or implied consent of the owner, to wit: Scott David Beach was observed on video tape, and admitted to, stealing five doses of OxyContin 80 mg, a Schedule II controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(4) Scott David Beach did, on or about October 15, 2003, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Greg's Pharmacy, beyond the express or implied consent of the owner, to wit: Scott David Beach was observed on video tape, and admitted to, stealing seven doses of OxyContin 80 mg, a Schedule II controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(5) Scott David Beach did, on or about October 16, 2003, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Greg's Pharmacy, beyond the express or implied consent of the owner, to wit: Scott David Beach admittedly stole eight doses of OxyContin 80 mg, a Schedule II controlled substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(6) Scott David Beach did, on or about October 11, 2003, intentionally create and/or knowingly possess a false or forged prescription, to wit: Scott David Beach admittedly created, and kept on file at the pharmacy, prescription #2205343, written for 90 doses of OxyContin 80 mg, a Schedule II controlled substance, so as to conceal his thefts and abuse of the drug. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(7) Scott David Beach did, on or about May 1, 2001, through October 22, 2003, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Greg's Pharmacy, 126 North Main Street, Bluffton, Ohio, beyond the express or implied consent of the owner, to wit: Scott David Beach has admitted stealing drugs from his employer. Audit figures show shortages for the following controlled substances:

<u>Drug</u>	<u>Strength</u>	<u>Schedule</u>	<u>Shortage</u>
OxyIR	5 mg	II	261
oxycodone	5 mg	II	420
oxycodone/APAP	5/325 mg	II	2097
Percocet	10/650 mg	II	309
Percocet	5/325 mg	II	21
Percocet	7.5/325 mg	II	200
Percocet	10/325 mg	II	1
oxycodone/APAP	5/500 mg	II	2000
OxyContin	80 mg	II	351
OxyContin	40 mg	II	84
OxyContin	10 mg	II	25
Tylox	5/500 mg	II	201
hydrocodone/APAP	5/500 mg	III	956
hydrocodone/APAP	10/500 mg	III	6993
hydrocodone/APAP	10/650 mg	III	8216
Lorcet	10/650 mg	III	740
Vicodin	5/500 mg	III	716
Vicoprofen	7.5/200 mg	III	1564
propoxyphene HCL	65 mg	IV	1525

Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

(8) Scott David Beach did, on or about May 10, 2001, through October 20, 2003, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Greg's Pharmacy, 112 East Main Street, Pandora, Ohio, beyond the express or implied consent of the owner, to wit: Scott David Beach has admitted stealing drugs

from his employer. Audit figures show shortages for the following controlled substances:

<u>Drug</u>	<u>Strength</u>	<u>Schedule</u>	<u>Shortage</u>
OxyContin	80 mg	II	29
OxyContin	40 mg	II	10

Such conduct is in violation of Section 2913.02 of the Ohio Revised

(9) On April 21, 2004, Scott David Beach pled guilty to one count of Theft of Drugs, a felony of the fourth degree under Divisions (A)(1) and (B)(6) of Section 2913.02 of the Ohio Revised Code. On the same date, Scott David Beach was granted Intervention in Lieu of Conviction. State of Ohio vs. Scott D. Beach, Case No. CR 2004 0170, Allen County Common Pleas Court.

CONCLUSIONS OF LAW

(1) The State Board of Pharmacy concludes that paragraphs (2) through (9) of the Findings of Fact constitute being guilty of a felony and gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.

(2) The State Board of Pharmacy concludes that paragraphs (2) through (8) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

(3) The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Scott David Beach on November 5, 2003.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-1-22728, held by Scott David Beach and such suspension is effective as of the date of the mailing of this Order.

(A) Scott David Beach, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.

(B) Scott David Beach, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

Further, two years from the effective date of Scott David Beach's Summary Suspension Order, the Board will consider any petition filed by Scott David Beach for a hearing, pursuant to Ohio

Revised Code Chapter 119., for reinstatement. The Board will only consider reinstatement of the license to practice pharmacy in Ohio if the following conditions have been met:

(A) Scott David Beach must enter into a new contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, upon signing, mail a copy of the contract to the Board office. The contract must provide that:

(1) Random, observed urine drug screens shall be conducted at least once each month.

(a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.

(b) Oxycodone must be added to the standard urine drug screen.

(c) Results of all drug screens must be negative. Refusal of a drug screen or a diluted drug screen is equivalent to a positive result. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.

(2) Attendance is required a minimum of three times per week at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.

(3) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.

(B) Scott David Beach must demonstrate satisfactory proof to the Board that he is no longer addicted to or abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.

(C) Scott David Beach must provide, at the reinstatement petition hearing, documentation of the following:

(1) Payment to Greg's Pharmacy of any outstanding restitution, or a payment plan approved by Greg's Pharmacy;

(2) Compliance with the contract required above (e.g.-proof of giving the sample within twelve hours of notification and copies of all drug screen reports, meeting attendance records, treatment program reports, etc.);

(3) Compliance with the continuing pharmacy education requirements set forth in Chapter 4729-7 of the Ohio Administrative Code as applicable and in effect on the date of petitioning the Board for reinstatement;

(4) Compliance with the terms of this Order.

(D) If reinstatement is not accomplished within three years of the effective date of this Order, Scott David Beach must also show successful completion of the NAPLEX examination or an equivalent examination approved by the Board.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY (Aye-7/Nay-0).
MOTION CARRIED.
SO ORDERED.

It is hereby certified by this Board that the above language is a copy of the Order entered upon its journal in this case.

Section 119.12 of the Ohio Revised Code authorizes an appeal from this Order. An order that denied admission to an examination, or denied the issuance or renewal of a license or registration, or revoked or suspended a license, may be appealed to the court of common pleas in the Ohio county of your place of business or in your Ohio county of residence. Any other order may be appealed to the Court of Common Pleas of Franklin County, Ohio.

Such an appeal, setting forth the order appealed from and the grounds of the appeal, must be commenced by the filing of a Notice of Appeal with both the State Board of Pharmacy and the appropriate court within fifteen (15) days after the mailing of this Order and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

BY ORDER OF THE STATE BOARD OF PHARMACY

ORDER MAILED & EFFECTIVE: NOVEMBER 10, 2004

SUMMARY SUSPENSION ORDER/NOTICE OF OPPORTUNITY FOR HEARING

November 5, 2003

Scott David Beach, R.Ph.
157 Garmatter Street
Bluffton, Ohio 45817

Re: Ohio Registered Pharmacist
Number 03-1-22728

Dear Mr. Beach:

In accordance with Section 3719.121(A) of the Ohio Revised Code, the Board has determined that you are addicted to the use of controlled substances. Further, in accordance with Section 3719.121(B) of the Ohio Revised Code, the Board has determined that there is clear and convincing evidence that the continuation of your professional practice presents a danger of immediate and serious harm to others. The reasons for the Board's action are that you have committed any and/or all of the following acts:

- (1) Records of the Board of Pharmacy indicate that you were originally licensed in the State of Ohio on November 12, 1997, pursuant to examination, and are currently licensed to practice pharmacy in the State of Ohio.
- (2) You are addicted to or abusing drugs to such a degree as to render you unfit to practice pharmacy within the meaning of Sections 3719.121 and 4729.16 of the Ohio Revised Code, to wit: you have admitted to Board agents that you are addicted to hydrocodone and oxycodone; you have stolen controlled substances, and forged a prescription to hide your thefts, for your personal abuse of the drugs.
- (3) You did, on or about October 14, 2003, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Greg's Pharmacy, beyond the express or implied consent of the owner, to wit: you were observed on video tape, and admitted to, stealing 5 doses of OxyContin 80 mg, a Schedule II Controlled Substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (4) You did, on or about October 15, 2003, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Greg's Pharmacy, beyond the express or implied consent of the owner, to wit: you were observed on video tape, and admitted to, stealing 7 doses of OxyContin 80 mg, a Schedule II Controlled Substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (5) You did, on or about October 16, 2003, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Greg's Pharmacy, beyond the express or implied consent of the owner, to wit: you admittedly stole 8 doses of OxyContin 80 mg, a Schedule II Controlled Substance. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.
- (6) You did, on or about October 11, 2003, intentionally create and/or knowingly possessed a false or forged prescription, to wit: you admittedly created, and kept on file at the pharmacy, prescription #2205343, written for 90 doses of OxyContin 80

mg, a Schedule II Controlled Substance, so as to conceal your thefts and abuse of the drug. Such conduct is in violation of Section 2913.02 of the Ohio Revised Code.

- (7) You did, on or about May 1, 2001, through October 22, 2003, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Gregs' Pharmacy, 126 North Main Street, Bluffton, Ohio, beyond the express or implied consent of the owner, to wit: you have admitted stealing drugs from your employer. Audit figures show shortages for the following controlled substances:

<u>Drug</u>	<u>Strength</u>	<u>Schedule</u>	<u>Shortage</u>
Duragesic	50 mcg	II	40
Duragesic	75 mcg	II	5
Duragesic	100 mcg	II	10
OxyIR	5 mg	II	261
oxycodone	5 mg	II	420
oxycodone/APAP	5/325 mg	II	2097
Percocet	10/650 mg	II	309
Percocet	5/325 mg	II	21
Percocet	7.5/325 mg	II	200
Percocet	10/325 mg	II	1
oxycodone/APAP	5/500 mg	II	2000
OxyContin	80 mg	II	351
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hydrocodone/APAP	5/500 mg	III	956
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Lorcet	10/650 mg	III	740
Vicodin	5/500 mg	III	716
Vicoprofen	7.5/200 mg	III	1564
propoxyphene HCL	65 mg	IV	1525

Such conduct is in violation of Section 2913.02 of the Ohio Revised Code and if proven constitutes being guilty of a felony or gross immorality and/or guilty of dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

[paragraph added by Notice dated 03/31/04]

- (8) You did, on or about May 10, 2001, through October 20, 2003, with purpose to deprive, knowingly obtain or exert control over dangerous drugs, the property of Gregs' Pharmacy, 112 East Main Street, Pandora, Ohio, beyond the express or implied consent of the owner, to wit: you have admitted stealing drugs from your employer. Audit figures show shortages for the following controlled substances:

<u>Drug</u>	<u>Strength</u>	<u>Schedule</u>	<u>Shortage</u>
OxyContin	80 mg	II	29
OxyContin	40 mg	II	10

Such conduct is in violation of Section 2913.02 of the Ohio Revised Code and if proven constitutes being guilty of a felony or gross immorality and/or guilty of dishonesty or unprofessional conduct in the practice of pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code.

[paragraph added by Notice dated 03/31/04]

YOU ARE HEREBY NOTIFIED that Section 3719.121(A) of the Ohio Revised Code states, in pertinent part: "any ... pharmacist, ... who is or becomes addicted to the use of controlled substances, shall be suspended by the board that authorized the person's license, certificate, or registration..."

YOU ARE HEREBY NOTIFIED that Section 3719.121(B) of the Ohio Revised Code states, in pertinent part:

(B) If the board under which a person has been issued a license, . . . , . . . determines that there is clear and convincing evidence that continuation of the person's professional practice or method of prescribing or personally furnishing controlled substances presents a danger of immediate and serious harm to others, the board may suspend the person's license, . . . , . . . , without a prior hearing.

WHEREFORE, PURSUANT TO SECTIONS 3719.121(A) and (B) OF THE OHIO REVISED CODE, YOU ARE HEREBY NOTIFIED THAT YOUR REGISTRATION AND LICENSE TO PRACTICE PHARMACY IN THE STATE OF OHIO IS HEREBY SUSPENDED. FURTHER, PURSUANT TO RULE 4729-9-01(F) OF THE OHIO ADMINISTRATIVE CODE, DURING THIS TERM OF SUSPENSION YOU MAY NOT BE EMPLOYED BY OR WORK IN ANY FACILITY LICENSED BY THE BOARD OF PHARMACY TO POSSESS OR DISTRIBUTE DANGEROUS DRUGS. This suspension shall remain in effect until an adjudicatory hearing has been held pursuant to Chapter 119. of the Revised Code, and a final Order has been issued, during which time you may not engage in the practice of pharmacy.

YOU ARE FURTHER NOTIFIED that Section 4729.16 of the Ohio Revised Code states, in pertinent part:

(A) The State Board of Pharmacy, after notice and hearing in accordance with Chapter 119. of the Ohio Revised Code, may revoke, suspend, limit, place on probation, or refuse to grant or renew an identification card under this chapter, or may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Ohio Revised Code for a similar offense, or in the case of a violation of a section of the Ohio Revised Code that does not bear a penalty, a monetary penalty or forfeiture of no more than five hundred dollars, if the Board finds a pharmacist or pharmacy intern:

- (1) Guilty of a felony or gross immorality;
- (2) Guilty of dishonesty or unprofessional conduct in the practice of pharmacy;
- (3) Addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render the pharmacist or pharmacy intern unfit to practice pharmacy;
- (4) Has been convicted of a misdemeanor related to, or committed in, the practice of pharmacy;
- (5) Guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of this chapter, sections 3715.52 to 3715.72 or Chapter 2925. or 3719. of the Revised Code;
- (6) Guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy;

(7) Guilty of knowingly lending the pharmacist's or pharmacy intern's name to an illegal practitioner of pharmacy or having professional connection with an illegal practitioner of pharmacy;

(8) Guilty of dividing or agreeing to divide remuneration made in the practice of pharmacy with any other individual, including, but not limited to, any licensed health professional authorized to prescribe drugs or any owner, manager, or employee of a health care facility, residential care facility, or nursing home;

(9) Has violated the terms of a consult agreement entered into pursuant to section 4729.39 of the Revised Code;

(10) Has committed fraud, misrepresentation, or deception in applying for or securing a license or identification card issued by the board under this chapter or under Chapter 3715. or 3719. of the Revised Code.

IF YOU REQUEST A HEARING within 30 days of the time of the mailing of this notice, such will be afforded. Such request shall be mailed to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126. You may appear at such hearing in person, by your attorney, or by such other representative as is permitted to practice before the agency, or you may present your position, arguments or contentions in writing; and, at this hearing, you may also present evidence and examine any witnesses appearing for and against you.

YOU ARE FURTHER ADVISED that if you do not request such a hearing within thirty (30) days of the mailing of this notice, the State Board of Pharmacy, upon consideration of the aforementioned allegations against you, may take action without such a hearing.

Division (B) of Section 4729.16 of the Revised Code provides in pertinent part that: "Any individual whose identification card is revoked, suspended, or refused, shall return his identification card and certificate of registration to the offices of the state board of pharmacy within ten days after receipt of notice of such action." The certificate and identification card should be forwarded by certified mail, return receipt requested.

(D-031105-031)

BY ORDER OF THE STATE BOARD OF PHARMACY

SUMMARY SUSPENSION EFFECTIVE NOVEMBER 5, 2003

This remains in effect until an Order is issued by the Board or a Settlement Agreement is signed.